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PROTECTION OF MINORITIES

Joint written statement submitted by the International Fellowship of Reconciliation and Pax Christi International, non-governmental organizations in consultative status (category II)

The Secretary-General has received the following written statement which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[26 August 1993]

INTERNATIONAL MINORITY PROTECTION GUARANTEES: FORMER YUGOSLAVIA

"Our program should not be simply to stop the bleeding, so to speak, but also to reach out and say, 'here is a place that leads you into a land of some greater opportunity'. To recount: these are the pieces that I would put together: humanitarian assistance, personal accountability, the willingness to use force, and the establishment of something constructive that offers opportunity. And I think if we can do that, those powerful words, 'Never forget, never again' can ring loud[, ...] clear [and true] - in Bosnia and throughout the world."

George P.SHULTZ, former United States Secretary of State
(Vital Speeches of the Day, New York, 1/1/1993)

1. Contrary to received wisdom, in international law the right - and indeed the obligation - to intervene in Yugoslavia on humanitarian grounds 1/ has existed even before the United Nations Security Council began to consider itself "seized by the matter" of Yugoslavia's convulsions and disintegration as a threat to international peace and security.* For the still valid Treaty of St-Germain-en-Laye of 10 September 1919 explicitly provides for the protection of "racial, linguistic and religious minorities" in all of former Yugoslavia. And every one of its signatories, i.e. the United States, Great Britain, France, Italy and Japan - has not only an internationally recognized right, but also corresponding responsibilities and interests to see to it that the guarantees thus given to the minorities involved are effectively respected. And though the rights and mechanisms written into that Treaty involved the League of Nations and the Permanent Court of International Justice, the United Nations General Assembly already provided for these rights and mechanisms to be handled by the appropriate United Nations bodies in order to respond to present and future needs and circumstances.

2. Manifestly, Europe's sadly lacking will, and the United Nations ordinary mechanisms for containing and eventually resolving the real threats to international peace and security, have so far failed in the case of former Yugoslavia. The powers that be have thus begun to look at alternative or complementary ways and means to address these vital matters. And, as the former United Nations High Commissioner for Refugees Sadruddin Aga Khan suggested in his visionary Sorbonne address, 2/ those in charge may with benefit draw inspiration also from past minority protection instruments.

3. Russia's call last year for more imaginative use of the United Nations instruments points in the right direction (it proposed to utilize the United Nations Trusteeship System for interim measures designed to effectively meet the growing actual and foreseeable needs and challenges in the field of minority protection particularly in parts of the former Soviet Union). Also, the Minnesota Advocates for Human Rights recently proposed use of the United Nations Trusteeship System in order to forestall a repeat of the Bosnian tragedy in other parts of the former Yugoslavia. These and other initiatives have brought back to memory the League of Nations comprehensive minority protection regime with its international guarantees which, notably in the cases of Yugoslavia, Iraq and the Baltic States, are seen to have survived the League's dissolution in 1946 3/ (E/CN.4/367; E/CN.4/Sub.2/1992/NGO/27; E/CN.4/Sub.2/1993/34, para. 112; E/CN.4/Sub.2/1993/NGO/27). As such, they may now be reactivated promptly by way of the mechanism adopted by the United Nations General Assembly with its resolution 24 (I) of 12 February 1946.

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* A separate document, entitled "Legal facts and considerations", containing extracts of documents supporting the view that there is a body of dormant but still valid international rights and obligations concerning

protection of minorities in the former Yugoslavia, is available for consultation in the files of the secretariat.

4. *Apartheid* and *ghettos* are both intolerable and sure-failure answers to minority problems anywhere. And particularly in a modern, organically grown multi-ethnic society like Bosnia and Herzegovina, a territorial split-up reflecting militarily imposed ethnic border lines - even a "provisional" one brought about by "international mediation" - might bring to the communities involved neither the intended lasting security nor the hoped-for riches - quite the contrary. For the needs of a modern economy, increasingly and imperatively, are *free movement of persons, goods, capital and services*. As other countries have already painfully experienced, any constraint on these fundamental freedoms on account of *ethnic, linguistic or religious apartheid policies* could not fail to translate immediately into further economic stagnation and decline, with corresponding adverse implications for the region's stability and security.

5. The responsible leaders of the family of nations and of countries such as Bosnia and Herzegovina may thus want to look for vehicles which provide the peoples concerned with sufficient breathing space and allow them to be brought back from the dark ages to the realities and opportunities of the twentieth century. The Charter of the United Nations is seen to offer such a practical vehicle in that its *Trusteeship System* (article 75ss), in the hands of imaginative politicians, may be turned into a corresponding time machine.

6. By voluntarily and temporarily placing the illegally occupied, contested and/or destabilized parts of the internationally recognized territory of the Republic of Bosnia and Herzegovina under the United Nations Trusteeship System, its legitimate Government, with the decisive support of far-sighted and principled world leaders, could indeed offer all parties to the conflict a neutral and non-prejudicial - and thus generally acceptable - reconciliation vehicle. Within that frame, they could work out genuine and lasting solutions to their particular minority problems without undue outside interference and pressures. All options provided for by the Charter would thus be safeguarded, and the peoples concerned could develop once again a habit of peaceful, civilized and mutually beneficial conduct.

7. Applied as a *political neutralizer,* i.e. a United Nations "foam carpet" covering an entire conflict area, and thus as a sort of healing cover and novel conflict resolution formula, the United Nations Trusteeship System could at the same time prove its worth as an alternative to "negotiations" under duress. In line with the many United Nations Security Council resolutions on former Yugoslavia, it could provide for upholding the fundamental principles at stake there. Some of these principles have also been brought into focus by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities which, in its resolution 1993/42 on Bosnia and Herzegovina, appealed

> *"to the international community:*

"(a) To reject any permanent partition which results from aggression, intervention and massive violation of human rights, in particular the abhorrent practice of 'ethnic cleansing' that has developed into 'religious cleansing';

"(b) To deny the validity of any agreement obtained under extreme duress from the Government of the Republic of Bosnia and Herzegovina for purposes other than a cessation of hostilities paving the way for a more lasting peaceful settlement based on the principles of the Charter of the United Nations, including respect for human rights and fundamental freedoms without discrimination on the grounds, inter alia, of race, ethnicity or religion; and

"[Urged] that, to overcome the present partition of Bosnia and Herzegovina brought about by aggression and ethnic cleansing, a process of peace-building should be initiated through the United Nations and appropriate intergovernmental organizations to reintegrate, over a period of time, the national society of Bosnia and Herzegovina as a whole."

8. The trusteeship formula seems to meet these imperative objectives. It is the result of studies initiated by the Good Offices Group of European Lawmakers 4/ at the request of pre-war Yugoslavia's Chamber of Republics and Provinces 5/. As such it may be considered for application not only in the case of Bosnia and Herzegovina but also for other parts of former Yugoslavia as well as for other present or future trouble spots of the world.

Notes

1/ Mario Bettati, "Un droit d'ingérence?", *Revue Générale de Droit International Publique*, 3, 1991, p. 639; Mario Bettati, Bernard Kouchner et. al. "Le devoir d'ingérence", Denoel, Paris 1987.

2/ *"L'aide humanitaire sert-elle à défendre les peuples?"*, delivered in Paris on 25 October 1992 (Bellerive Foundation, Geneva).

3/ Danilo Türk, *"Le droit des minorités en Europe"*, p. 452, in: Henri Giordan (ed.), "Les minorités en Europe", Editions Kimé, Paris 1992.

4/ Consisting of some 60 European parliamentarians, this Group has been involved in the analysis and development of ideas and documents concerning the *Gulf conflict* which might contribute to a lasting solution notably of some perennial minority protection problems there. Its research branch, CORUM, has prepared this paper in cooperation notably with B.Cherlonneix, P.Martin, E.Querio, F.Ruiz, M.Soleiman, C.Vieira dos Santos, R.Wadlow and P.Wainwright. It is based on: *"Towards Regaining Stability and Dignity with the UN Trusteeship System - Documents on ex-Yugoslavia: the International Minority Protection Guarantees and Mechanisms to Bring Them to Fruition"*, August 1993, CORUM, box 2580, 1211 Geneva 2. The editor, J.A. Keller, is alone responsible for eventual errors and

omissions. He wishes to express his gratitude for the assistance and numerous services provided by the United Nations Office in Geneva, by the director of the United Nations Geneva Library and by the League of Nations archivist and their staff.

5/ In his letter of June 1991 the President of this upper legislative body of Yugoslavia, Dr. Miran Mejak, thus solicited

> "the good offices of your Group of European Lawmakers towards a peaceful, early and lasting resolution of the crisis which has arisen among the European Republics and Provinces which, after the Second World War, have constituted the Socialist Federal Republic of Yugoslavia. We trust all men of good will to contribute in the search for such a solution which shall reflect the applicable principles of the United Nations, the Council of Europe and other European and national institutions and traditions. And we trust everybody concerned to join us in exercising maximum restraint and to refrain from all actions which might jeopardize the realization of this objective. To these effects, we invite you to explore related possibilities, including international mediation, and to develop such contacts which are indicated by your research, including coordinating contacts with national and international authorities."